

Entered -07-12-01 - sb  
CL 01L0444 - GWENDOLYN BURNS

01-R-1841

CLAIM OF:

**J. DAVID STUBINS, ESQ.**  
1434 Briarhill Lane  
Atlanta, Georgia 30324

For bodily injuries and property damages alleged to have been sustained when a bicycle was ridden through a section of sidewalk that was under construction on January 15, 2001 at 901 Lindbergh Drive.

THIS ADVERSED REPORT IS  
APPROVED

BY:   
ROSALIND RUBENS NEWELL  
DEPUTY CITY ATTORNEY

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 01L0444

Date: October 30, 2001

Claimant /Victim J. DAVID STUBINS, ESQ.  
BY: (Atty) (Ins. Co.) \_\_\_\_\_  
Address: 1434 Briarhill Lane, Atlanta, Georgia 30324  
Subrogation: \_\_\_\_\_ Claim for Property damage \$ 350.00 Bodily Injury \$ Unspecified  
Date of Notice: 7/10/01 Method: Written, Proper X Improper \_\_\_\_\_  
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X  
Date of Occurrence 1/15/01 Place: 901 Lindbergh Drive (North Fork Peachtree-Creek Sewer Project)  
Department \_\_\_\_\_ Division \_\_\_\_\_  
Employee involved \_\_\_\_\_ Disciplinary Action: \_\_\_\_\_

NATURE OF CLAIM: Claimant alleges that he sustained bodily injuries and property damage when he was thrown from his bicycle after riding through a section of sidewalk that was under construction. An investigation determined that a private contractor performed work at the incident location. The claimant has been advised of this and his claim has been forwarded to the company for resolution.

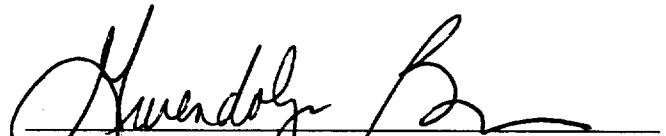
INVESTIGATION:

Statements: City employee \_\_\_\_\_ Claimant \_\_\_\_\_ Others X Written \_\_\_\_\_ Oral \_\_\_\_\_  
Pictures \_\_\_\_\_ Diagrams \_\_\_\_\_ Reports: Police \_\_\_\_\_ Dept Report X Other X  
Traffic citations issued: City Driver \_\_\_\_\_ Claimant Driver \_\_\_\_\_  
Citation disposition: City Driver \_\_\_\_\_ Claimant Driver \_\_\_\_\_

BASIS OF RECOMMENDATION:

Function: Governmental \_\_\_\_\_ Ministerial \_\_\_\_\_  
Improper Notice \_\_\_\_\_ More than Six Months \_\_\_\_\_ Other X Damages reasonable \_\_\_\_\_  
City not involved X Offer rejected \_\_\_\_\_ Compromise settlement \_\_\_\_\_  
Repair/replacement by Ins. Co. \_\_\_\_\_ Repair/replacement by City Forces \_\_\_\_\_  
Claimant Negligent \_\_\_\_\_ City Negligent \_\_\_\_\_ Joint \_\_\_\_\_ Claim Abandoned \_\_\_\_\_

Respectfully submitted,

  
INVESTIGATOR - GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ \_\_\_\_\_ Adverse X Account charged: 1A01 \_\_\_\_\_ 2J01 \_\_\_\_\_ 2H01 \_\_\_\_\_  
Claims Manager:  Concur/date 10-31-01  
Committee Action: \_\_\_\_\_ Council Action \_\_\_\_\_

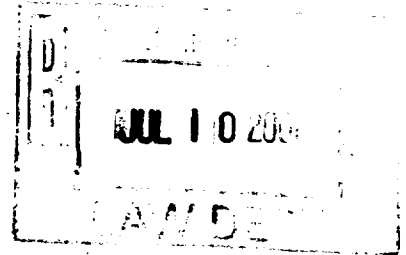
J. DAVID STUBINS, ESQ.  
1434 BRIARHILL LANE  
ATLANTA, GEORGIA 30324  
Home: (404) 636-2126  
Work: (404) 656-3370  
JDavidins@Hotmail.com

Burns  
07/11/01  
*Am*

July 5, 2001

Sent Via Certified Mail  
#Z 172 528 774  
Mr. Vern McCarty  
Atlanta City Council  
55 Trinity Avenue, S.W.  
Suite 2900  
Atlanta, GA 30303-3584

ENTERED - 7-12-01 - SB  
01L0444 - GWEN BURNS



Re: Notice of Claim Pursuant to  
O.C.G.A. §36-33-5  
J. David Stubins v. City of Atlanta

Dear Mr. McCarty:

This letter serves as my notice of a claim, pursuant to O.C.G.A. §36-33-5, against the City of Atlanta for bodily injuries and property damage that I suffered as a result of the City of Atlanta's negligence.

While riding my bicycle, I was injured and my bike was damaged when my bike's front tire landed in a hole in the sidewalk. A section of the sidewalk spanning the entire width of the walkway had been removed by the city's employees/agents. I flew over the handlebars of my bike and was injured when my bike came to abrupt stop as the tire landed in the hole.

**Time**

- This accident occurred during the afternoon of January 15, 2001.

**Location**

- The accident occurred on the sidewalk on the westbound side of the street in the vicinity of 901 Lindbergh Drive, in the general area of where the North Fork Peachtree Creek Relief Sewer Improvement Program # FC 7088-99 was under construction.

**City of Atlanta's Negligence**

- The city/its agents/its employees failed to fill in the hole in the sidewalk they had excavated and failed to erect a fence or barrier around the excavation/failed to erect a bridge over the excavation sufficient for the safe passage of the public traveling on that sidewalk.

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Furthermore, the guarding and the protection of the excavation was not in accordance with state law and with specifications promulgated by the commissioner of public works and on file in the office of the commissioner of public works.

- The city had actual or constructive notice of this defect in the sidewalk. Despite such notice, the city failed to maintain the sidewalk in a reasonably safe condition so that persons could pass along it in the ordinary methods of travel with reasonable safety.

### **Damages**

- **Bodily Injury**

- I scraped my right shoulder-blade, broke a finger in my left hand, and separated/dislocated my right shoulder. As result of these injuries movement in the finger that was broken is now permanently restricted and my right shoulder is still disabled. The full extent of my shoulder injury has not yet been ascertained for I am currently undergoing treatment with an orthopedic surgeon. A recent MRI of my right shoulder indicates that surgery may be warranted. To date, my medical bills are in excess of \$2,000.00.

- **Pain and suffering.**

- The scrapes on my shoulder blade fully healed with only minimal scarring within approximately three weeks. Prior to that time, any physical contact with the open wound, which usually occurred when I took my shirt on or off, or while sleeping, was very painful. While the wound was healing any extensive movement of my upper body often caused the wound to break open and bleed. Many times I was unable to bandage the wound since I could not reach the wound on my back. The wound needed to be bandaged each morning and each night.
- My broken finder was painful for about five to eight weeks. It is still painful whenever I attempt to bend it to what was its previous full range of motion.
- My right shoulder was extremely painful for about three weeks and continues to ache especially upon physical exertion. I still am unable to use my right shoulder for any activities that require heavy lifting, pulling, pushing, or entail extensive movement in that shoulder. It has only been within the past three weeks that I have been able to resume jogging. Prior to the time, the jarring movements involved in jogging were too painful. If surgery is required, I will experience even greater pain during the recuperative period.

- **Property Damage**

- My bicycle was extensively damaged. Specifically, the brake handles and the gearshifts were broken off; the rear safety light was smashed; and either the rims or the frame of the bike was bent to such a degree that neither the front nor the back tires rotate freely. I believe the brakes may also be broken. There may be additional damage, but since I have

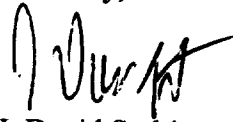
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not been able to ride a bike since the date of the accident, I have not had a bike repair shop provide me with an estimate. If the bike cannot be repair, it will cost approximately \$350 to replace it with a comparable 18 speed mountain bike with a chromolley frame.

Please contact me within the next thirty days. If this claim for bodily injuries and property damage cannot be resolved I will have no alternative but to file a lawsuit.

Sincerely,

A handwritten signature in black ink, appearing to read "J. David Stubins", with a stylized, cursive script.

J. David Stubins